



# **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**

Distr.: General  
11 April 2014

Original: English

**ADVANCE UNEDITED  
VERSION**

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## **Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families**

### **Concluding observations on the second periodic report of the Philippines\***

1. The Committee considered the second periodic report of the Philippines (CMW/C/PHL/2) at its 249<sup>th</sup> and 250<sup>th</sup> meetings (CMW/C/SR.249 and SR.250), held on 3 and 4 April 2014. At its 260<sup>th</sup> meeting (CMW/C/SR.260), held on 11 April 2014, the Committee adopted the following concluding observations.

#### **A. Introduction**

2. The Committee welcomes the submission of the second periodic report of the State party in response to the list of issues prior to reporting and the additional oral information provided by the large, multi-sectoral and high-level delegation headed by H.E. Rosalinda Dimapilis-Baldoz, Minister of Labour and Employment of the Philippines, and co-headed by H.E. Cecilia B. Rebong, Permanent Representative of the Philippines to the United Nations in Geneva, and including five Deputy Ministers representing the Department for Foreign Affairs, the Department of Labour and Employment, the Philippine Overseas Employment Administration, the Department of Justice and the Presidential Human Rights Commission as well as other government officials, which enabled the Committee to better understand the extensive and advanced legal and policy framework to implement the Convention in the State party.

3. The Committee recognizes that the Philippines, which is predominantly a country of origin with more than 10 million of migrant workers overseas, has made substantial progress in protecting the rights of its migrant workers abroad. The country however continues to face several challenges as a country of origin, transit and destination for migrant workers.

4. The Committee notes that some of the countries in which Filipino migrant workers are employed are not yet parties to the Convention, which may constitute an obstacle to migrant workers' enjoyment of their rights under the Convention.

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\* Adopted at its 20<sup>th</sup> session (31 March - 11 April 2014)



## **B. Positive aspects**

5. The Committee reiterates its appreciation for the expressed high level political will by the State party to respond to the needs of migrant workers abroad as evidenced by the multitude of programs and support structures for overseas Filipino workers covering all stages of the migration process. The Committee in particular appreciates the review of the State party's policies to advance the rights of migrant workers and strengthen program implementation procedures, capacity building and rationalization of resources.

6. The Committee welcomes as a positive step the adoption of the following instruments:

(a) The Magna Carta of Women (Republic Act No. 9710), in August 2009;

(b) The Amended Migrant Workers and Overseas Filipinos Act (Republic Act No. 10022), in March 2010;

(c) The Executive Order No. 32 creating the Overseas Preparedness and Response Team which provides for assistance to migrants in times of crisis, the Executive Order No. 41 reactivating the Presidential Task Force against Illegal Recruitment, in April 2011, and the campaigns against illegal recruitment to raise awareness among migrant workers about pre-employment and pre-departure requirements;

(d) The Guidelines and Procedures which shall be adopted to harmonize the forging of bilateral labour agreements between the Philippines and other countries (Administrative Order No. 28), in 2012;

(e) The Domestic Workers Act (Republic Act 10361), on 18 January 2013; and

(f) The Expanded Anti-Trafficking in Persons Act (Republic Act 10364), which provides additional protection to victims of trafficking and service providers, in January 2013.

7. The Committee welcomes the ratification by the State party of the following international instruments:

(a) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 17 April 2012; and

(b) ILO Convention No. 189 (2011) on Decent Work for Domestic Workers, on 5 September 2012.

## **C. Principal subjects of concern, suggestions and recommendations**

### **1. General measures of implementation (arts. 73 and 84)**

#### *Legislation and application*

8. The Committee appreciates the detailed information on the achievements in establishing the necessary legal and policy framework and other practical measures that form part of the infrastructure for regular migration. However, it notes that the State party has not supplied sufficiently detailed information on legal and practical measures taken to implement the Committee's previous concluding observations (CMW/C/PHL/CO/1). The Committee reiterates its previous recommendations (CMW/C/PHL/CO/1, paras. 40 and 44) to step up efforts to prevent irregular migration of Filipino nationals, and to strengthen the reintegration programs, including job-creating measures.

9. **The State party is requested to implement all the recommendations addressed to it by the Committee and to take the necessary steps to ensure that its national laws and policies are in line with the provisions of the Convention.**

10. The Committee is concerned that section 29(a)(2) of the Immigration Act, which allows for the prohibition of entry or expulsion on the grounds that the immigrant worker is suffering from an infection or illness or is pregnant, unrelated to the performance of the tasks for which the worker has been recruited, may result in discrimination of migrant workers.

11. **While noting the enactment of the Anti-HIV/AIDS Discrimination Law, the Committee recommends that the State party amend the Immigration Act in order to avoid discrimination of migrant workers on the basis of one's health situation, including real or perceived HIV status or pregnancy, and ensure that any health testing be voluntary and free from coercion.**

12. The Committee is concerned at the lack of sufficient information including statistics on the effectiveness of the Household Service Workers Programme of 2006 on the protection of the rights of migrant workers employed in household service.

13. **The Committee recommends that the State party assess the effectiveness and monitor the implementation of the Household Service Workers Programme of 2006, in particular the compliance with the contracts of employment by the employers abroad as regards payment of adequate salaries and provision of labour benefits, and include relevant qualitative and statistical data in its next periodic report.**

14. The Committee notes that the State party has not made the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive communications from States parties and individuals.

15. **The Committee reiterates its previous recommendation and encourages the State party to consider making the declarations provided for in articles 76 and 77 of the Convention as soon as possible (CMW/C/PHL/CO/1, para. 18).**

16. The Committee notes that the State party has not acceded to International Labour Organization (ILO) Conventions No. 131 (1970) concerning Minimum Wage Fixing, No. 167 (1988) concerning Safety and Health in Construction, and No. 181 (1997) concerning Private Employment Agencies.

17. **The Committee invites the State party to consider acceding to ILO Conventions No. 131 (1970) concerning Minimum Wage Fixing, No. 167 (1988) concerning Safety and Health in Construction, and No. 181 (1997) concerning Private Employment Agencies.**

#### *Data collection*

18. The Committee notes with interest the expanded range of statistics on the flows of Filipino migrant workers and welcomes the commitment by the State party to arrange for sharing of electronic information between the Department of Foreign Affairs, Overseas Workers Welfare Administration, Philippine Overseas Employment Administration and the Bureau of Immigration. However, it observes the existence of several departmental information systems which result in a lack of centralized disaggregated data to evaluate the effective implementation of the Convention, particularly as regards Filipino migrant workers abroad, their conditions of employment, situation of returnees, migrants in transit, women and unaccompanied child migrants and foreign migrant workers in the State party, including seasonal migrant workers.

19. Reiterating its previous recommendations (CMW/C/PHL/CO/1, para. 20), the Committee encourages the State party to create a sound centralized and comprehensive database covering all aspects of the Convention and include in it disaggregated data, to the extent possible, to facilitate adopting migration policies for implementing effectively the provisions of the Convention. The State party should ensure that the Shared Government Information System on Migration receives adequate human and financial resources, enhance collaboration with the country's embassies and consulates to compile data and, among other measures, endeavour to systematically evaluate the situation of irregular migrants.

*Training in and dissemination of the Convention*

20. The Committee notes the insufficient clarity about the target groups for whom training programs and materials on the Convention have been developed and the means of dissemination of such information among all relevant stakeholders, including national, regional and local government bodies and civil society organizations.

21. **The Committee encourages the State party to:**

(a) **Intensify training on the rights under the Convention for all officials working in the area of migration, in particular police and border personnel, judges, prosecutors and responsible consular officers, as well as national, regional and local government officials and social workers;**

(b) **Take further steps to ensure access by migrant workers to information and guidance on their rights under the Convention in all commonly used languages in the country, in particular through the Pre-Employment and Pre-Departure Orientation Seminars;**

(c) **Continue to work with civil society organizations and the media, including those in provinces, in order to disseminate information and promote the Convention.**

**2. General principles (arts. 7 and 83)**

*Non-discrimination*

22. While noting with interest that the principle of non-discrimination is stipulated in the State party's laws, the Committee regrets that foreign workers can enjoy fundamental rights of workers only on the basis of restrictive conditions, such as reciprocity, in contravention of the Convention.

23. **The Committee reiterates its previous recommendation that the exercise of human rights is not based on the principle of reciprocity and recommends that the State party amend domestic laws so that all migrant workers and members of their families residing within the country can enjoy the rights under the Convention without any discrimination, in conformity with Articles 1 and 7 of the Convention.**

24. The Committee notes with concern the reports that the Philippine Overseas Employment Agency standard contract for overseas Filipino workers going to work in certain West-Asian countries stipulate "the engagement in trade union activities by the employee" as a valid reason for the employer to terminate the contract of employment in violation of the provisions of the Convention.

25. **The Committee recommends that the State party undertake necessary review to delete trade union activities from the list of grounds for termination of employment in all standard employment contracts, regardless of the destination country or profession.**

*Right to an effective remedy*

26. While noting the measures and mechanisms adopted by the State party to protect the rights of migrant workers abroad, the Committee expresses its concern at the persistence of some obstacles to access to justice, including delays of proceedings, corruption and abuse of authority such as in the cases of exploitation of distressed Filipino women workers abroad by some foreign service, labour and welfare personnel. It is also concerned at the lack of legal assistance in cases of illegal recruitment, limited access to the Legal Assistance Fund and the low number of complaints reported to the Philippine Overseas Employment Agency and the Philippine Overseas Labour Office. The Committee notes the lack of adequate information on available administrative and judicial remedies, remedies sought and received by migrant workers and in which countries, and the insufficient numbers and inadequate awareness of the diplomatic and consular staff abroad about the available remedies in countries of employment.

27. **The Committee recommends that the State party should:**

(a) **Investigate and punish all cases of corruption involving public officials, implement mechanisms to detect public officials abusing their authority and enhance the safeguards at the Filipino Workers Resource Centres;**

(b) **Systematically inform migrant workers and members of their families, including those in an irregular situation, about the available judicial and other remedies, and guarantee their equal access to complaints procedures and effective legal assistance, including through the Legal Assistance Fund, as well as redress from the courts and other mechanisms when their rights under the Convention have been violated; and**

(c) **Allocate sufficient material resources and competent foreign service, labour and welfare personnel for the effective conduct of work abroad and ensure regular capacity building and skills enhancement of such personnel, in cooperation with the concerned civil society and workers communities, about the available remedies in countries of employment, in particular those categorized as “highly problematic”.**

28. The Committee recognizes the commitment by the State party to human rights of migrant workers and members of their families; however, it notes with concern that the Commission on Human Rights of the Philippines does not have a comprehensive mandate pertaining to rights of migrant workers and that it lacks adequate financial and human resources to conduct work effectively as well as clear and transparent selection and dismissal procedures for the Commissioners.

29. **The Committee requests the State party to:**

(a) **Provide the Commission on Human Rights of the Philippines with a broad mandate to effectively carry out the promotion and protection of the rights of migrant workers and members of their families under the Convention;**

(b) **Provide adequate financial and human resources to the Commission to enable it to effectively discharge its mandate in full compliance with the Paris Principles (General Assembly resolution 48/134, annex); and**

(c) **Establish clear and transparent selection and dismissal procedures for the Commissioners.**

### 3. Human rights of all migrant workers and members of their families (arts. 8–35)

30. The Committee notes with concern that the granting of the work permit is conditional on the existence of employment and that the loss of employment results in the loss of the work permit, which impacts the legal situation of migrant workers.

**31. The Committee recommends to the State party to bring the laws and practice in line with Article 8, paragraph 1, of the Convention, to ensure that the right of a migrant worker to reside in the country for the purpose of employment shall not be revoked if the migrant worker loses employment prematurely.**

32. The Committee notes with appreciation the progress made in improving and expanding the State party's consular services, including the deployment of female officers and welfare wardens. Nonetheless, the Committee notes with concern the insufficient consular staffing and the lack of information on the protection and assistance provided by the State party's consulates to migrant workers abroad, especially in cases involving deprivation of liberty and/or expulsion orders of migrants abroad.

**33. The Committee recommends that the State party take further steps to strengthen consular staffing so that its consular services can respond more effectively in order to protect and promote the rights of Filipino migrant workers and members of their families where necessary, and provide, in particular, the necessary assistance to any of them who are deprived of liberty or subject to an expulsion order. The Committee also recommends that the State party enhance the assistance through embassies and consulates to migrant workers victims of the *Kafalah* system, in particular in the Gulf countries so that all exploitation and abuses can be effectively reported, investigated and punished.**

34. The Committee is concerned that, notwithstanding the efforts by the State party, Filipino migrant workers abroad, especially women domestic workers, continue to suffer from widespread exploitation and abuse in several host countries.

**35. The Committee recommends that the State party continue to:**

(a) Monitor and assess the implementation of bilateral and multilateral labour agreements and memoranda of understanding between the origin and destination countries, and other protective measures, to ensure the effective enjoyment of the rights and benefits by the Filipino workers abroad, in particular women, in line with the Convention;

(b) Address the situation of migrant workers who are victims of the *Kafalah* (sponsorship) system, in particular in the Gulf countries, to consider raising this issue with a view towards abolishing this system by the Governments concerned and conclude specific bilateral agreements with the countries receiving Filipino migrant workers, with the involvement of concerned civil society actors, to enhance protection of specific categories of workers, in particular women, from exploitation and abuse; and

(c) Offer adequate information to migrant workers and members of their families travelling to countries with *Kafalah* system on the regulatory framework, and the rights and benefits, as part of the Pre-Employment and Pre-Departure Orientation Seminars.

36. Although the Committee recognizes the measures taken by the State party to provide mobile services for the registration of the birth of Filipino migrant children abroad, the Committee is concerned at the reported difficulties in access to birth registration of Filipino migrant children abroad in some instances, including those in an irregular situation, such as due to distance to the foreign service posts and incurred costs.

37. **The Committee encourages the State party to take further steps for reaching out to the destination countries for the registration of children of migrant workers, both in regular and irregular situations, and for updating relevant databases.**

**4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36–56)**

38. The Committee expresses concern that sections 269 and 272(b) of the Labour Code impede the exercise by migrant workers in the State party of the right to freedom of association and the right to form or join a trade union.

39. **The Committee recommends that the State party should adopt all necessary measures, including legislative amendments, to guarantee the right of migrant workers and members of their families to form associations and trade unions, in accordance with article 40 of the Convention.**

40. The Committee appreciates the efforts of the State party to facilitate the right to participate in public affairs and the right to vote on the basis of the Overseas Absentee Voting Act in the elections for President, Vice-President, Senators and Party-list representatives, but it regrets the low participation of Filipino workers abroad in the national elections in May 2013.

41. **The Committee recommends that the State party strengthen its efforts in guaranteeing the right to vote of Filipino migrant workers living abroad by facilitating their registration and participation in the next presidential and national elections; continue measures for voting by mail and internet; and secure sufficient funding for overseas voting.**

42. While noting with appreciation the State party's information that a foreign migrant worker has the freedom to remit all or portion of his or her earnings, the Committee notes that under section 22 of the Labour Code, certain categories of Filipino workers abroad such as seafarers are reportedly obliged to remit up to 80 per cent of their foreign exchange earnings to their families, dependents, and other beneficiaries in the State party.

43. **The Committee recommends that the State party review its legislation in this regard to bring it in line with Article 47 of the Convention so that migrant workers can transfer their earnings and savings as they may desire.**

**5. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64–71)**

44. While recognizing the State party's commitment to pursue ethical recruitment principles, such as through the Code of Ethics for Manning Agencies, and efforts to strengthen the licensing system of recruitment agencies, the Committee is concerned that private recruitment agencies continue to charge excessive placement fees, provide often incomplete information which may result in acceptance of salaries below the minimum wage and deprivation of other labour benefits and continue to serve as intermediaries for abusive foreign recruiters.

45. **The Committee recommends that the State party undertake the following measures:**

(a) **Reinforce regulatory regime for private recruitment agencies and strengthen the existing licensing system for recruitment agencies;**

(b) **Enhance recruitment monitoring and inspections to prevent private recruitment agencies from charging excessive fees for their services and from acting as intermediaries for abusive foreign recruiters;**

(c) **Ensure that private recruitment agencies provide complete information to the individuals seeking employment abroad and guarantee the effective enjoyment of all agreed employment benefits, and in particular salaries;**

(d) **Investigate and punish illegal practices of recruiters with a view to exposing errant practices;**

(e) **Adopt a policy of “no placement fees” for persons intending to work abroad.**

46. The Committee notes the State party’s efforts to secure welfare of the children of migrants on site and those left behind in the country including through the pilot education, entrepreneurial and training programs. However, the Committee is concerned at the limited number of such measures, and their reliance primarily on civil society contribution, and the vulnerability of children left behind in the country to violence, abuse, neglect and exploitation. The Committee also regrets the lack of clarity about the measures taken to facilitate resettlement and reintegration of Filipino migrant workers upon their return, including their reunification with children left behind in the country.

47. **The Committee recalls its previous recommendation and recommends that the State party:**

(a) **Conduct a nationwide research on children of migrant workers on site and those left behind in the country to establish demographic profile of such population in order to guide its policies and programs; and**

(b) **Adopt a comprehensive strategy to promote and protect the rights of children and families of Filipino workers, in particular through education, entrepreneurial, training and community welfare programs, and further its cooperation to that effect with civil society actors on situ and in the country.**

(c) **Provide information in its next periodic report on the measures taken to facilitate resettlement and reintegration of Filipino migrant workers upon their return, including their reunification with children left behind in the country.**

48. The Committee takes note of the State party’s efforts to prevent and combat trafficking in persons, including the operation of the Inter-Agency Committee against Trafficking and the Philippine Anti-Trafficking Database. However, it expresses its concern that the prosecution rate for the trafficking in persons, especially women and children, remains very low due to difficulties in law enforcement as illegal recruiters are often relatives or foreign recruitment agencies according to information received by the Committee. The Committee also notes with concern that many judges, prosecutors, social service workers and law enforcement officials seem to have insufficient knowledge of legislation against trafficking in persons, which may hinder successful investigation, prosecution and punishment of such acts and assistance to the victims.

49. **The Committee recommends that the State party strengthen its efforts to combat trafficking in persons, in particular women and children, through vigorous implementation of the national strategic plan to that effect, which should include the following measures:**

(a) **Enhance proper identification and referral mechanisms to improve assistance to victims of trafficking;**

(b) **Promptly, effectively and impartially investigate, prosecute and punish all acts of trafficking in persons and other related offences, and deal expeditiously with the cases filed against illegal recruiters;**



(c) Reinforce the mechanisms of support, rehabilitation, protection and redress, including the State-funded social rehabilitation services and assistance in reporting incidents of trafficking to the police, and ensure their availability to all victims of trafficking, including at provincial and local levels;

(d) Enhance training for police officers, law enforcement officers, judges, prosecutors, labour inspectors, teachers, health workers and the staff of the State party's embassies and consulates, and distribute the Manual of Procedures in Handling Complaints of Trafficking in Persons, Illegal Recruitment and Child Labour and the Manual on Labour Dimensions of Trafficking in Persons for Investigators, Prosecutors, Labour Inspectors and Service Providers;

(e) Place public information materials in all transport terminals to educate public about trafficking and protection of migrants; and

(f) Systematically collect disaggregated data on trafficking in persons.

## 6. Follow-up and dissemination

### *Follow-up*

50. The Committee requests the State party to include in its third periodic report detailed information on measures taken to follow up on the recommendations made in the present concluding observations. The Committee recommends that the State party should take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to members of the Government and the Parliamentary Assembly, as well as to local authorities.

51. The Committee requests the State party to involve civil society organizations more closely in the preparation of the State party's third periodic report, and in the implementation of recommendations made in the present concluding observations.

### *Dissemination*

52. The Committee likewise requests the State party to disseminate these concluding observations widely, particularly to public agencies and the judiciary, non-governmental organizations and other members of civil society, including those in all provinces and to bring them to the attention of Filipino migrants abroad and foreign migrant workers in transit or residing in the Philippines.

## 7. Next periodic report

53. The Committee requests the State party to submit its third periodic report by 1 May 2019. Alternatively, the State party may follow the simplified reporting procedure whereby the Committee draws up a list of issues which is then transmitted to the State party for a response. The State party's replies to the list of issues constitute its report under article 73 of the Convention, without the State party having to submit a traditional periodic report. This new optional procedure was adopted by the Committee at its fourteenth session, in April 2011 (see A/66/48, para. 26).